

AMENDED IN ASSEMBLY APRIL 21, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2186

Introduced by Assembly Member Lowenthal

February 20, 2014

An act to amend Section 1370 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2186, as amended, Lowenthal. Defendants: competency.

Existing law provides that if a defendant in a criminal proceeding is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent. Existing law provides that the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified. Existing law further specifies commitment proceedings to include circumstances for the voluntary and involuntary administration of antipsychotic medication.

This bill would require the court to ~~use~~ *consider* opinions developed by examining medical professionals during the inquiry determining mental ~~competence~~; *competence* when the court is determining if the defendant lacks the capacity to make decisions regarding the administration of antipsychotic medication.

Existing law provides that if the treating psychiatrist certifies that antipsychotic medication has become medically necessary and appropriate for the defendant, antipsychotic medication may be

administered to the defendant for a maximum of 21 days, provided, however, that, within 72 hours of the certification, the defendant is provided a medication review hearing before an administrative law judge to be conducted at the facility where the defendant is receiving treatment.

This bill would authorize a court to extend the administrative law judge's order authorizing involuntary medication for 14 days beyond the 21-day certification period upon a finding of good cause *or by stipulation of the parties*. The bill would authorize the district attorney, county counsel, or representative of any facility where a defendant found incompetent to stand trial is committed, to petition the court for an order to administer involuntary medication.

Existing law provides that an order by the court authorizing involuntary medication of the defendant is valid for one year. Existing law requires the court to review the order 6 months after it is made to determine if the grounds for the authorization remain. Existing law requires the medical director of the state hospital or other treatment facility to which the defendant is confined to make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence, within 90 days of commitment, and thereafter, at 6-month intervals or until the defendant becomes mentally competent.

This bill would require the court to review its order authorizing involuntary medication *at the time of review of the initial progress report and* in conjunction with the 6-month intervals described above. The bill would provide that within 60 days of the expiration of the one year involuntary medication order, the *district attorney, county counsel, or representative of the* facility where the defendant is being treated may petition the committing court for a one year renewal, and would require the petition to include the basis for involuntary medication. The bill would require notice of the petition to the defendant, the defendant's attorney, and the district attorney, and would require the court to hear and determine whether the defendant continues to meet the criteria for involuntary medication. The bill would require the 90-day and 6-month reports described above regarding progress towards competence to also address whether the administration of antipsychotic medication remains necessary.

~~By imposing additional duties on local prosecuting agencies, this bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~*no*.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1370 of the Penal Code is amended to
2 read:

3 1370. (a) (1) (A) If the defendant is found mentally
4 competent, the criminal process shall resume, the trial on the
5 offense charged shall proceed, and judgment may be pronounced.

6 (B) If the defendant is found mentally incompetent, the trial or
7 judgment shall be suspended until the person becomes mentally
8 competent.

9 (i) In the meantime, the court shall order that the mentally
10 incompetent defendant be delivered by the sheriff to a state hospital
11 for the care and treatment of the mentally disordered, or to any
12 other available public or private treatment facility, including a
13 local county jail treatment facility, approved by the community
14 program director that will promote the defendant’s speedy
15 restoration to mental competence, or placed on outpatient status
16 as specified in Section 1600.

17 (ii) However, if the action against the defendant who has been
18 found mentally incompetent is on a complaint charging a felony
19 offense specified in Section 290, the prosecutor shall determine
20 whether the defendant previously has been found mentally
21 incompetent to stand trial pursuant to this chapter on a charge of
22 a Section 290 offense, or whether the defendant is currently the
23 subject of a pending Section 1368 proceeding arising out of a
24 charge of a Section 290 offense. If either determination is made,
25 the prosecutor shall so notify the court and defendant in writing.
26 After this notification, and opportunity for hearing, the court shall
27 order that the defendant be delivered by the sheriff to a state
28 hospital or other secure treatment facility for the care and treatment

1 of the mentally disordered unless the court makes specific findings
2 on the record that an alternative placement would provide more
3 appropriate treatment for the defendant and would not pose a
4 danger to the health and safety of others.

5 (iii) If the action against the defendant who has been found
6 mentally incompetent is on a complaint charging a felony offense
7 specified in Section 290 and the defendant has been denied bail
8 pursuant to subdivision (b) of Section 12 of Article I of the
9 California Constitution because the court has found, based upon
10 clear and convincing evidence, a substantial likelihood that the
11 person's release would result in great bodily harm to others, the
12 court shall order that the defendant be delivered by the sheriff to
13 a state hospital for the care and treatment of the mentally disordered
14 unless the court makes specific findings on the record that an
15 alternative placement would provide more appropriate treatment
16 for the defendant and would not pose a danger to the health and
17 safety of others.

18 (iv) The clerk of the court shall notify the Department of Justice
19 in writing of any finding of mental incompetence with respect to
20 a defendant who is subject to clause (ii) or (iii) for inclusion in his
21 or her state summary criminal history information.

22 (C) Upon the filing of a certificate of restoration to competence,
23 the court shall order that the defendant be returned to court in
24 accordance with Section 1372. The court shall transmit a copy of
25 its order to the community program director or a designee.

26 (D) A defendant charged with a violent felony may not be
27 delivered to a state hospital or treatment facility pursuant to this
28 subdivision unless the state hospital or treatment facility has a
29 secured perimeter or a locked and controlled treatment facility,
30 and the judge determines that the public safety will be protected.

31 (E) For purposes of this paragraph, "violent felony" means an
32 offense specified in subdivision (c) of Section 667.5.

33 (F) A defendant charged with a violent felony may be placed
34 on outpatient status, as specified in Section 1600, only if the court
35 finds that the placement will not pose a danger to the health or
36 safety of others. If the court places a defendant charged with a
37 violent felony on outpatient status, as specified in Section 1600,
38 the court ~~must~~ shall serve copies of the placement order on defense
39 counsel, the sheriff in the county where the defendant will be

1 placed, and the district attorney for the county in which the violent
2 felony charges are pending against the defendant.

3 (2) Prior to making the order directing that the defendant be
4 confined in a state hospital or other treatment facility or placed on
5 outpatient status, the court shall proceed as follows:

6 (A) The court shall order the community program director or a
7 designee to evaluate the defendant and to submit to the court within
8 15 judicial days of the order a written recommendation as to
9 whether the defendant should be required to undergo outpatient
10 treatment, or committed to a state hospital or to any other treatment
11 facility. ~~No~~ A person shall *not* be admitted to a state hospital or
12 other treatment facility or placed on outpatient status under this
13 section without having been evaluated by the community program
14 director or a designee. The community program director or
15 designee shall evaluate the appropriate placement for the defendant
16 between a state hospital or a local county jail treatment facility
17 based upon guidelines provided by the State Department of State
18 Hospitals. If a local county jail treatment facility is selected, the
19 State Department of State Hospitals shall provide treatment at the
20 county jail treatment facility and reimburse the county jail
21 treatment facility for the reasonable costs of the bed during the
22 treatment. The six-month limitation in Section 1369.1 shall not
23 apply to individuals deemed incompetent to stand trial who are
24 being treated to restore competency within a county jail treatment
25 facility pursuant to this section.

26 (B) The court shall hear and determine whether the defendant
27 lacks capacity to make decisions regarding the administration of
28 antipsychotic medication. The court shall ~~utilize~~ *consider* opinions
29 *in the reports* prepared pursuant to subdivision (a) of Section 1369,
30 *as applicable to the issue of whether the defendant lacks capacity*
31 *to make decisions regarding the administration of antipsychotic*
32 *medication*, and shall proceed as follows:

33 (i) The court shall hear and determine whether any of the
34 following is true:

35 (I) The defendant lacks capacity to make decisions regarding
36 antipsychotic medication, the defendant's mental disorder requires
37 medical treatment with antipsychotic medication, and, if the
38 defendant's mental disorder is not treated with antipsychotic
39 medication, it is probable that serious harm to the physical or
40 mental health of the patient will result. Probability of serious harm

1 to the physical or mental health of the defendant requires evidence
2 that the defendant is presently suffering adverse effects to his or
3 her physical or mental health, or the defendant has previously
4 suffered these effects as a result of a mental disorder and his or
5 her condition is substantially deteriorating. The fact that a
6 defendant has a diagnosis of a mental disorder does not alone
7 establish probability of serious harm to the physical or mental
8 health of the defendant.

9 (II) The defendant is a danger to others, in that the defendant
10 has inflicted, attempted to inflict, or made a serious threat of
11 inflicting substantial physical harm on another while in custody,
12 or the defendant had inflicted, attempted to inflict, or made a
13 serious threat of inflicting substantial physical harm on another
14 that resulted in his or her being taken into custody, and the
15 defendant presents, as a result of mental disorder or mental defect,
16 a demonstrated danger of inflicting substantial physical harm on
17 others. Demonstrated danger may be based on an assessment of
18 the defendant's present mental condition, including a consideration
19 of past behavior of the defendant within six years prior to the time
20 the defendant last attempted to inflict, inflicted, or threatened to
21 inflict substantial physical harm on another, and other relevant
22 evidence.

23 (III) The people have charged the defendant with a serious crime
24 against the person or property, involuntary administration of
25 antipsychotic medication is substantially likely to render the
26 defendant competent to stand trial, the medication is unlikely to
27 have side effects that interfere with the defendant's ability to
28 understand the nature of the criminal proceedings or to assist
29 counsel in the conduct of a defense in a reasonable manner, less
30 intrusive treatments are unlikely to have substantially the same
31 results, and antipsychotic medication is in the patient's best medical
32 interest in light of his or her medical condition.

33 (ii) If the court finds any of the conditions described in clause
34 (i) to be true, the court shall issue an order authorizing involuntary
35 administration of antipsychotic medication to the defendant when
36 and as prescribed by the defendant's treating psychiatrist at any
37 facility housing the defendant for purposes of this section. *The*
38 *order shall be valid for no more than one year, pursuant to*
39 *subparagraph (A) of paragraph (7).* The court shall not order
40 involuntary administration of psychotropic medication under

1 subclause (III) of clause (i) unless the court has first found that the
2 defendant does not meet the criteria for involuntary administration
3 of psychotropic medication under subclause (I) of clause (i) and
4 does not meet the criteria under subclause (II) of clause (i).

5 (iii) In all cases, the treating hospital, facility, or program may
6 administer medically appropriate antipsychotic medication
7 prescribed by a psychiatrist in an emergency as described in
8 subdivision (m) of Section 5008 of the Welfare and Institutions
9 Code.

10 (iv) If the court has determined that the defendant has the
11 capacity to make decisions regarding antipsychotic medication,
12 and if the defendant, with advice of his or her counsel, consents,
13 the court order of commitment shall include confirmation that
14 antipsychotic medication may be given to the defendant as
15 prescribed by a treating psychiatrist pursuant to the defendant's
16 consent. The commitment order shall also indicate that, if the
17 defendant withdraws consent for antipsychotic medication, after
18 the treating psychiatrist complies with the provisions of
19 subparagraph (C), the defendant shall be returned to court for a
20 hearing in accordance with subparagraphs (C) and (D) regarding
21 whether antipsychotic medication shall be administered
22 involuntarily.

23 (v) If the court has determined that the defendant has the
24 capacity to make decisions regarding antipsychotic medication
25 and if the defendant, with advice from his or her counsel, does not
26 consent, the court order for commitment shall indicate that, after
27 the treating psychiatrist complies with the provisions of
28 subparagraph (C), the defendant shall be returned to court for a
29 hearing in accordance with subparagraphs (C) and (D) regarding
30 whether antipsychotic medication shall be administered
31 involuntarily.

32 (vi) Any report made pursuant to paragraph (1) of subdivision
33 (b) shall include a description of any antipsychotic medication
34 administered to the defendant and its effects and side effects,
35 including effects on the defendant's appearance or behavior that
36 would affect the defendant's ability to understand the nature of
37 the criminal proceedings or to assist counsel in the conduct of a
38 defense in a reasonable manner. During the time the defendant is
39 confined in a state hospital or other treatment facility or placed on
40 outpatient status, either the defendant or the people may request

1 that the court review any order made pursuant to this subdivision.
2 The defendant, to the same extent enjoyed by other patients in the
3 state hospital or other treatment facility, shall have the right to
4 contact the patients' rights advocate regarding his or her rights
5 under this section.

6 (C) If the defendant consented to antipsychotic medication as
7 described in clause (iv) of subparagraph (B), but subsequently
8 withdraws his or her consent, or, if involuntary antipsychotic
9 medication was not ordered pursuant to clause (v) of subparagraph
10 (B), and the treating psychiatrist determines that antipsychotic
11 medication has become medically necessary and appropriate, the
12 treating psychiatrist shall make efforts to obtain informed consent
13 from the defendant for antipsychotic medication. If informed
14 consent is not obtained from the defendant, and the treating
15 psychiatrist is of the opinion that the defendant lacks capacity to
16 make decisions regarding antipsychotic medication based on the
17 conditions described in subclause (I) or (II) of clause (i) of
18 subparagraph (B), the treating psychiatrist shall certify whether
19 the lack of capacity and any applicable conditions described above
20 exist. That certification shall contain an assessment of the current
21 mental status of the defendant and the opinion of the treating
22 psychiatrist that involuntary antipsychotic medication has become
23 medically necessary and appropriate.

24 (D) (i) If the treating psychiatrist certifies that antipsychotic
25 medication has become medically necessary and appropriate
26 pursuant to subparagraph (C), antipsychotic medication may be
27 administered to the defendant for not more than 21 days, provided,
28 however, that, within 72 hours of the certification, the defendant
29 is provided a medication review hearing before an administrative
30 law judge to be conducted at the facility where the defendant is
31 receiving treatment. The treating psychiatrist shall present the case
32 for the certification for involuntary treatment and the defendant
33 shall be represented by an attorney or a patients' rights advocate.
34 The attorney or patients' rights advocate shall be appointed to meet
35 with the defendant no later than one day prior to the medication
36 review hearing to review the defendant's rights at the medication
37 review hearing, discuss the process, answer questions or concerns
38 regarding involuntary medication or the hearing, assist the
39 defendant in preparing for the hearing and advocating for his or
40 her interests at the hearing, review the panel's final determination

1 following the hearing, advise the defendant of his or her right to
2 judicial review of the panel’s decision, and provide the defendant
3 with referral information for legal advice on the subject. The
4 defendant shall also have the following rights with respect to the
5 medication review hearing:

6 (I) To being given timely access to the defendant’s records.

7 (II) To be present at the hearing, unless the defendant waives
8 that right.

9 (III) To present evidence at the hearing.

10 (IV) To question persons presenting evidence supporting
11 involuntary medication.

12 (V) To make reasonable requests for attendance of witnesses
13 on the defendant’s behalf.

14 (VI) To a hearing conducted in an impartial and informal
15 manner.

16 (ii) If the administrative law judge determines that the defendant
17 either meets the criteria specified in subclause (I) of clause (i) of
18 subparagraph (B), or meets the criteria specified in subclause (II)
19 of clause (i) of subparagraph (B), then antipsychotic medication
20 may continue to be administered to the defendant for the 21-day
21 certification period. Concurrently with the treating psychiatrist’s
22 certification, the treating psychiatrist shall file a copy of the
23 certification and a petition with the court for issuance of an order
24 to administer antipsychotic medication beyond the 21-day
25 certification period. For purposes of this subparagraph, the treating
26 psychiatrist shall not be required to pay or deposit any fee for the
27 filing of the petition or other document or paper related to the
28 petition.

29 (iii) If the administrative law judge disagrees with the
30 certification, medication may not be administered involuntarily
31 until the court determines that antipsychotic medication should be
32 administered pursuant to this section.

33 (iv) The court shall provide notice to the prosecuting attorney
34 and to the attorney representing the defendant, and shall hold a
35 hearing, no later than 18 days from the date of the certification, to
36 determine whether antipsychotic medication should be ordered
37 beyond the certification period.

38 (v) If, as a result of the hearing, the court determines that
39 antipsychotic medication should be administered beyond the

1 certification period, the court shall issue an order authorizing the
 2 administration of that medication.

3 (vi) The court shall render its decision on the petition and issue
 4 its order no later than three calendar days after the hearing and, in
 5 any event, no later than the expiration of the 21-day certification
 6 period.

7 ~~(vii) The court may extend the administrative law judge's order
 8 for 14 days beyond the 21-day certification period upon a finding
 9 of good cause. If the administrative law judge upholds the
 10 certification pursuant to clause (ii), the court may, for a period
 11 not to exceed 14 days, extend the certification and continue the
 12 hearing pursuant to stipulation between the parties or upon a
 13 finding of good cause. In determining good cause, the court may
 14 review the petition filed with the court, the administrative law
 15 judge's order, and any additional testimony needed by the court
 16 to determine if it is appropriate to continue medication beyond the
 17 21-day certification and for a period of up to 14 days.~~

18 (viii) The district attorney, county counsel, or representative of
 19 any facility where a defendant found incompetent to stand trial is
 20 committed may petition the court for an order to administer
 21 involuntary medication pursuant to the criteria set forth in
 22 subclauses (II) and (III) of clause (i) of subparagraph (B). The
 23 order is reviewable as provided in paragraph (7).

24 (3) When the court orders that the defendant be confined in a
 25 state hospital or other public or private treatment facility, the court
 26 shall provide copies of the following documents which shall be
 27 taken with the defendant to the state hospital or other treatment
 28 facility where the defendant is to be confined:

29 (A) The commitment order, including a specification of the
 30 charges.

31 (B) A computation or statement setting forth the maximum term
 32 of commitment in accordance with subdivision (c).

33 (C) A computation or statement setting forth the amount of
 34 credit for time served, if any, to be deducted from the maximum
 35 term of commitment.

36 (D) State summary criminal history information.

37 (E) Any arrest reports prepared by the police department or
 38 other law enforcement agency.

39 (F) Any court-ordered psychiatric examination or evaluation
 40 reports.

1 (G) The community program director's placement
2 recommendation report.

3 (H) Records of any finding of mental incompetence pursuant
4 to this chapter arising out of a complaint charging a felony offense
5 specified in Section 290 or any pending Section 1368 proceeding
6 arising out of a charge of a Section 290 offense.

7 (4) When the defendant is committed to a treatment facility
8 pursuant to clause (i) of subparagraph (B) of paragraph (1) or the
9 court makes the findings specified in clause (ii) or (iii) of
10 subparagraph (B) of paragraph (1) to assign the defendant to a
11 treatment facility other than a state hospital or other secure
12 treatment facility, the court shall order that notice be given to the
13 appropriate law enforcement agency or agencies having local
14 jurisdiction at the site of the placement facility of any finding of
15 mental incompetence pursuant to this chapter arising out of a
16 charge of a Section 290 offense.

17 (5) When directing that the defendant be confined in a state
18 hospital pursuant to this subdivision, the court shall select the
19 hospital in accordance with the policies established by the State
20 Department of State Hospitals.

21 (6) (A) If the defendant is committed or transferred to a state
22 hospital pursuant to this section, the court may, upon receiving the
23 written recommendation of the medical director of the state hospital
24 and the community program director that the defendant be
25 transferred to a public or private treatment facility approved by
26 the community program director, order the defendant transferred
27 to that facility. If the defendant is committed or transferred to a
28 public or private treatment facility approved by the community
29 program director, the court may, upon receiving the written
30 recommendation of the community program director, transfer the
31 defendant to a state hospital or to another public or private
32 treatment facility approved by the community program director.
33 In the event of dismissal of the criminal charges before the
34 defendant recovers competence, the person shall be subject to the
35 applicable provisions of the Lanterman-Petris-Short Act (Part 1
36 commencing with Section 5000) of Division 5 of the Welfare and
37 Institutions Code). Where either the defendant or the prosecutor
38 chooses to contest either kind of order of transfer, a petition may
39 be filed in the court for a hearing, which shall be held if the court
40 determines that sufficient grounds exist. At the hearing, the

1 prosecuting attorney or the defendant may present evidence bearing
2 on the order of transfer. The court shall use the same standards as
3 are used in conducting probation revocation hearings pursuant to
4 Section 1203.2.

5 Prior to making an order for transfer under this section, the court
6 shall notify the defendant, the attorney of record for the defendant,
7 the prosecuting attorney, and the community program director or
8 a designee.

9 (B) If the defendant is initially committed to a state hospital or
10 secure treatment facility pursuant to clause (ii) or (iii) of
11 subparagraph (B) of paragraph (1) and is subsequently transferred
12 to any other facility, copies of the documents specified in paragraph
13 (3) shall be taken with the defendant to each subsequent facility
14 to which the defendant is transferred. The transferring facility shall
15 also notify the appropriate law enforcement agency or agencies
16 having local jurisdiction at the site of the new facility that the
17 defendant is a person subject to clause (ii) or (iii) of subparagraph
18 (B) of paragraph (1).

19 (7) (A) An order by the court authorizing involuntary
20 medication of the defendant shall be valid for no more than one
21 year. The court shall review the order ~~in conjunction with the six~~
22 ~~month interval progress reports~~ *at the time of the review of the*
23 *initial report and the six-month progress reports* pursuant to
24 paragraph (1) of subdivision (b) to determine if the grounds for
25 the authorization remain. In the review, the court shall consider
26 the reports of the treating psychiatrist or psychiatrists and the
27 defendant's patients' rights advocate or attorney. The court may
28 require testimony from the treating psychiatrist or psychiatrists
29 and the patients' rights advocate or attorney, if necessary. The
30 court may continue the order authorizing involuntary medication
31 for up to another six months, or vacate the order, or make any other
32 appropriate order.

33 (B) Within 60 days ~~of~~ *before* the expiration of the one-year
34 involuntary medication order, the *district attorney, county counsel,*
35 *or representative of any facility where the defendant is being*
36 ~~treated~~ *a defendant found incompetent to stand trial is committed*
37 may petition the committing court for a ~~one-year~~ renewal, subject
38 to the same conditions and requirements as in subparagraph (A).
39 The petition shall include the basis for involuntary medication set
40 forth in clause (i) of subparagraph (B) of paragraph (2). Notice of

1 the petition shall be provided to the defendant, the defendant's
2 attorney, and the district attorney. The court shall hear and
3 determine whether the defendant continues to meet the criteria set
4 forth in clause (i) of subparagraph (B) of paragraph (2). *The*
5 *hearing on any petition to renew an order for involuntary*
6 *medication shall be conducted prior to the expiration of the current*
7 *order.*

8 (b) (1) Within 90 days of a commitment made pursuant to
9 subdivision (a), the medical director of the state hospital or other
10 treatment facility to which the defendant is confined shall make a
11 written report to the court and the community program director
12 for the county or region of commitment, or a designee, concerning
13 the defendant's progress toward recovery of mental competence
14 and whether the administration of antipsychotic medication remains
15 necessary. Where the defendant is on outpatient status, the
16 outpatient treatment staff shall make a written report to the
17 community program director concerning the defendant's progress
18 toward recovery of mental competence. Within 90 days of
19 placement on outpatient status, the community program director
20 shall report to the court on this matter. If the defendant has not
21 recovered mental competence, but the report discloses a substantial
22 likelihood that the defendant will regain mental competence in the
23 foreseeable future, the defendant shall remain in the state hospital
24 or other treatment facility or on outpatient status. Thereafter, at
25 six-month intervals or until the defendant becomes mentally
26 competent, where the defendant is confined in a treatment facility,
27 the medical director of the hospital or person in charge of the
28 facility shall report in writing to the court and the community
29 program director or a designee regarding the defendant's progress
30 toward recovery of mental competence and whether the
31 administration of antipsychotic medication remains necessary.
32 Where the defendant is on outpatient status, after the initial 90-day
33 report, the outpatient treatment staff shall report to the community
34 program director on the defendant's progress toward recovery,
35 and the community program director shall report to the court on
36 this matter at six-month intervals. A copy of these reports shall be
37 provided to the prosecutor and defense counsel by the court. If the
38 report indicates that there is no substantial likelihood that the
39 defendant will regain mental competence in the foreseeable future,
40 the committing court shall order the defendant to be returned to

1 the court for proceedings pursuant to paragraph (2) of subdivision
2 (c). The court shall transmit a copy of its order to the community
3 program director or a designee.

4 (2) Where the court has issued an order authorizing the treating
5 facility to involuntarily administer antipsychotic medication to the
6 defendant, the reports made ~~at six-month intervals~~ pursuant to
7 *paragraph (1)* concerning the defendant's progress toward
8 regaining competency shall also consider the issue of involuntary
9 medication. Each report shall include, but is not limited to, all the
10 following:

11 (A) Whether or not the defendant has the capacity to make
12 decisions concerning antipsychotic medication.

13 (B) If the defendant lacks capacity to make decisions concerning
14 antipsychotic medication, whether the defendant risks serious harm
15 to his or her physical or mental health if not treated with
16 antipsychotic medication.

17 (C) Whether or not the defendant presents a danger to others if
18 he or she is not treated with antipsychotic medication.

19 (D) Whether the defendant has a mental illness for which
20 medications are the only effective treatment.

21 (E) Whether there are any side effects from the medication
22 currently being experienced by the defendant that would interfere
23 with the defendant's ability to collaborate with counsel.

24 (F) Whether there are any effective alternatives to medication.

25 (G) How quickly the medication is likely to bring the defendant
26 to competency.

27 (H) Whether the treatment plan includes methods other than
28 medication to restore the defendant to competency.

29 (I) A statement, if applicable, that no medication is likely to
30 restore the defendant to competency.

31 (3) After reviewing the reports, the court shall determine whether
32 or not grounds for the order authorizing involuntary administration
33 of antipsychotic medication still exist and shall do one of the
34 following:

35 (A) If the original grounds for involuntary medication still exist,
36 the order authorizing the treating facility to involuntarily administer
37 antipsychotic medication to the defendant shall remain in effect.

38 (B) If the original grounds for involuntary medication no longer
39 exist, and there is no other basis for involuntary administration of

1 antipsychotic medication, the order for the involuntary
2 administration of antipsychotic medication shall be vacated.

3 (C) If the original grounds for involuntary medication no longer
4 exist, and the report states that there is another basis for involuntary
5 administration of antipsychotic medication, the court shall set a
6 hearing within 21 days to determine whether the order for the
7 involuntary administration of antipsychotic medication shall be
8 vacated or whether a new order for the involuntary administration
9 of antipsychotic medication shall be issued. The hearing shall
10 proceed as set forth in subparagraph (B) of paragraph (2) of
11 subdivision (a).

12 (4) Any defendant who has been committed or has been on
13 outpatient status for 18 months and is still hospitalized or on
14 outpatient status shall be returned to the committing court where
15 a hearing shall be held pursuant to the procedures set forth in
16 Section 1369. The court shall transmit a copy of its order to the
17 community program director or a designee.

18 (5) If it is determined by the court that no treatment for the
19 defendant's mental impairment is being conducted, the defendant
20 shall be returned to the committing court. The court shall transmit
21 a copy of its order to the community program director or a
22 designee.

23 (6) At each review by the court specified in this subdivision,
24 the court shall determine if the security level of housing and
25 treatment is appropriate and may make an order in accordance
26 with its determination. If the court determines that the defendant
27 shall continue to be treated in the state hospital or on an outpatient
28 basis, the court shall determine issues concerning administration
29 of antipsychotic medication, as set forth in subparagraph (B) of
30 paragraph (2) of subdivision (a).

31 (c) (1) At the end of three years from the date of commitment
32 or a period of commitment equal to the maximum term of
33 imprisonment provided by law for the most serious offense charged
34 in the information, indictment, or misdemeanor complaint,
35 whichever is shorter, a defendant who has not recovered mental
36 competence shall be returned to the committing court. The court
37 shall notify the community program director or a designee of the
38 return and of any resulting court orders.

39 (2) Whenever any defendant is returned to the court pursuant
40 to paragraph (1) or (4) of subdivision (b) or paragraph (1) of this

1 subdivision and it appears to the court that the defendant is gravely
2 disabled, as defined in subparagraph (B) of paragraph (1) of
3 subdivision (h) of Section 5008 of the Welfare and Institutions
4 Code, the court shall order the conservatorship investigator of the
5 county of commitment of the defendant to initiate conservatorship
6 proceedings for the defendant pursuant to Chapter 3 (commencing
7 with Section 5350) of Part 1 of Division 5 of the Welfare and
8 Institutions Code. Any hearings required in the conservatorship
9 proceedings shall be held in the superior court in the county that
10 ordered the commitment. The court shall transmit a copy of the
11 order directing initiation of conservatorship proceedings to the
12 community program director or a designee, the sheriff and the
13 district attorney of the county in which criminal charges are
14 pending, and the defendant's counsel of record. The court shall
15 notify the community program director or a designee, the sheriff
16 and district attorney of the county in which criminal charges are
17 pending, and the defendant's counsel of record of the outcome of
18 the conservatorship proceedings.

19 (3) If a change in placement is proposed for a defendant who
20 is committed pursuant to subparagraph (B) of paragraph (1) of
21 subdivision (h) of Section 5008 of the Welfare and Institutions
22 Code, the court shall provide notice and an opportunity to be heard
23 with respect to the proposed placement of the defendant to the
24 sheriff and the district attorney of the county in which criminal
25 charges are pending.

26 (4) Where the defendant is confined in a treatment facility, a
27 copy of any report to the committing court regarding the
28 defendant's progress toward recovery of mental competence shall
29 be provided by the committing court to the prosecutor and to the
30 defense counsel.

31 (d) The criminal action remains subject to dismissal pursuant
32 to Section 1385. If the criminal action is dismissed, the court shall
33 transmit a copy of the order of dismissal to the community program
34 director or a designee.

35 (e) If the criminal charge against the defendant is dismissed,
36 the defendant shall be released from any commitment ordered
37 under this section, but without prejudice to the initiation of any
38 proceedings that may be appropriate under the
39 Lanterman-Petris-Short Act, Part 1 (commencing with Section
40 5000) of Division 5 of the Welfare and Institutions Code.

1 (f) As used in this chapter, “community program director” means
2 the person, agency, or entity designated by the State Department
3 of State Hospitals pursuant to Section 1605 of this code and Section
4 4360 of the Welfare and Institutions Code.

5 (g) For the purpose of this section, “secure treatment facility”
6 shall not include, except for state mental hospitals, state
7 developmental centers, and correctional treatment facilities, any
8 facility licensed pursuant to Chapter 2 (commencing with Section
9 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter
10 3.2 (commencing with Section 1569) of, Division 2 of the Health
11 and Safety Code, or any community board and care facility.

12 (h) Nothing in this section shall preclude a defendant from filing
13 a petition for habeas corpus to challenge the continuing validity
14 of an order authorizing a treatment facility or outpatient program
15 to involuntarily administer antipsychotic medication to a person
16 being treated as incompetent to stand trial.

17 ~~SEC. 2. If the Commission on State Mandates determines that~~
18 ~~this act contains costs mandated by the state, reimbursement to~~
19 ~~local agencies and school districts for those costs shall be made~~
20 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
21 ~~4 of Title 2 of the Government Code.~~